

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs May 2, 2023

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Clerk of the
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STATE OF TENNESSEE v. PAULA CHRISTINE HUTCHERSON

Appeal from the Circuit Court for Decatur County
No. 22-CR-28 J. Brent Bradberry, Judge

No. W2022-01046-CCA-R3-CD

Paula Christine Hutcherson, Defendant, appeals after a jury found her guilty of eight counts of unlawful possession of a firearm in violation of Tennessee Code Annotated section 39-17-1307(b)(1)(B). The trial court subsequently sentenced her to ten years for each conviction, to be served concurrently, and ordered the sentences suspended to supervised probation. On appeal, Defendant argues that her prior convictions for obtaining drugs by fraud are not “felony crimes of violence” or “felony drug offenses” within the meaning of Tennessee Code Annotated section 39-17-1307(b)(1) and that her convictions must be reversed. Because we determine that Defendant’s prior convictions for obtaining drugs by fraud are felony drug offenses for the purposes of Tennessee Code Annotated section 39-17-1307(b)(1)(B), we affirm Defendant’s convictions. However, during our review of the record, we identified possible clerical errors on the judgment forms concerning the arrest date and pretrial jail credit dates. On remand, the trial court should enter corrected judgment forms if necessary.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and KYLE A. HIXSON, JJ., joined.

Sam Hinson, Lexington, Tennessee, for the appellant, Paula Christine Hutcherson.

Jonathan Skrmetti, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; Neil Thompson, District Attorney General; and Morgan B. Reynolds, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In March of 2022, Defendant agreed to waive her right to an indictment and to proceed by criminal information. Defendant was charged with one count of aggravated child endangerment pursuant to Tennessee Code Annotated section 39-15-402(a)(2), and nine counts of unlawful possession of a firearm having been previously convicted of a felony drug offense pursuant to Tennessee Code Annotated section 39-17-1307(b)(1)(B).

Affidavits of complaint accompanied the criminal information. According to the affiant, Sergeant Clyde Weaver of the Decatur County Sheriff's Department,

On 08/03/2021 . . . Sgt. Clyde Weaver, along with other deputies responded to [a residence] to affect the arrest of Kevin and Christina Sage [Defendant's son-in-law and daughter] for numerous outstanding drug and weapons warrants. Deputies made contact and arrested Christina Sage at the front door. Kevin Sage attempted to conceal himself inside the residence. Deputies conducted a sweep of the residence to find fugitive Kevin Sage. While clearing the residence, deputies saw in plain view 10 firearms throughout the residence and marijuana on a shelf. There were three minor children in the residence ages one, two, and four, and they all had the ability to access the firearms. Kevin Sage was found in a bedroom closet within arms reach of a firearm. Kevin Sage and [Defendant] are both convicted felons and cannot have access to firearms. Weapons and ammunition found in plain view were seized by deputies. Weapons are as follows: A grey Mossberg model 500 pump action 12[-]gauge shotgun . . . containing nine rounds of which one round was chambered in the bedroom to the immediate left when entering the residence from the front door and was propped against the wall in the corner with no safety on and the weapons were not secured and therefore could be accessed by [Defendant] and Kevin Sage as well. Inside the large walk[-]in closet attached to that bedroom inside a large box there were seven other firearms are as listed: Bushmaster Carbon 15 . . . , Linyi Junxing double barrel 12 gauge shotgun . . . , Steven's model 62 .22 LR . . . , Marlin 30-30 Lever Action 336W . . . , Ithara M-66-Super Single 12 gauge . . . (this was seen in a box located in the closet of the first room on the left with multiple others), Steven's model 94C 20 gauge break action . . . (located in box in closet in first room on the left). Camo Mossberg 500A 12 gauge. . . . The last two weapons were located in the . . . middle bedroom on the left where Kevin and Christina were staying to which the [G]lock was next to the bed on a small set of steps within reach of the 2[-]year[-]old and where Kevin was located while evading capture. A Ruger 41 caliber Blackhawk revolver was also located in this room while executing a search warrant on 08/04/2021. Each weapon was immediately within possession by [Defendant] who is [] prohibited from being able to possess a firearm and

were loaded and reachable by the children in the residence. [Defendant] and Joe Hutcherson Jr. have custody of the four[-]year[-]old minor in the residence and by the loaded weapons being accessible placed that minor in danger of serious bodily harm or death. This did occur in Decatur County.

The State filed a notice of enhancement, alleging Defendant's status as a Range III, persistent offender for her unlawful possession of firearm charges, and a Range I, standard offender for her aggravated child endangerment charge, based on her prior felony convictions as follows:

1. TennCare Fraud – Other than Enrollee – 10/16/2018
Henderson County, Tennessee
2. Obtain Drugs by Fraud – 10/16/2018
Henderson County, Tennessee
3. Obtain Drugs by Fraud – 11/5/2018
Henderson County, Tennessee
4. TennCare Fraud – Other than Enrollee – 11/19/2018
Henderson County, Tennessee
5. Obtain Drugs by Fraud – 11/19/2018
Henderson County, Tennessee
6. Obtain Drugs by Fraud – 12/17/2018
Henderson County, Tennessee
7. Identity Theft – 12/20/2018
Decatur County, Tennessee
8. Obtain Drugs by Fraud – 1/3/2019
Henderson County, Tennessee
9. Obtain Drugs by Fraud – 9/19/2019
Decatur County, Tennessee

Prior to trial, the State and Defendant entered into several trial stipulations. The parties stipulated that Defendant had legal custody of the minor child at the time of the incident, that body camera footage from Deputy Hunter Partain would be admitted into evidence in part, that the photographs of seized weapons would be admitted into evidence as long as all drug paraphernalia was redacted from the photographs, and that Defendant had prior felony convictions for purposes of the requisite status under Tennessee Code Annotated section 39-17-1307 charges.¹

¹ Importantly, for purposes of this appeal, Defendant stipulated only that she had prior felony convictions, not prior felony crime of violence or felony drug offense convictions.

A jury found Defendant not guilty of aggravated child endangerment in Count One and not guilty in Count Ten of unlawful possession of a firearm, to wit, a revolver. Defendant was found guilty of unlawful possession of a firearm in Counts Two through Nine.

Defendant filed a “Renewed Motion for Judgment of Acquittal.” In the motion, Defendant argued that she was not guilty of the eight counts of unlawful possession of a firearm “because it was not illegal for her to possess those particular firearms.” Specifically, Defendant argued that she had not been convicted of a “felony crime of violence,” a “felony drug offense,” did not possess a “handgun,” and was not “prohibited from possessing a firearm under any other state or federal law.” The State disagreed. The trial court denied the motion in a written order. The trial court determined that Defendant’s prior convictions “for [o]btaining [d]rugs by [f]raud in violation of T.C.A. § 53-11-402” were part of the Tennessee Drug Control Act and therefore qualified as “felony drug offense(s)” within the meaning of Tennessee Code Annotated section 39-17-1307(b)(1)(B). The trial court also determined that the evidence was sufficient to uphold Defendant’s convictions.

According to the judgment forms, Defendant was sentenced as a Range III, persistent offender to 10 years on each conviction for unlawful possession of a weapon, to be served concurrently. The sentences were suspended to supervised probation effective 7/5/2022.²

Defendant filed a timely notice of appeal and a notice pursuant to Tennessee Rule of Appellate Procedure 24(d) that no transcript or statement of the evidence would be filed.

Analysis

On appeal, Defendant does not dispute that “she was in possession of the rifles and shotguns that the jury convicted her of possessing.” However, Defendant argues that because “none of her prior felony convictions constitute either a ‘prior violent felony offense’ or a ‘prior felony drug offense’” she could not be guilty. In other words, Defendant insists that the evidence is insufficient to support the convictions solely because her prior convictions for obtaining drugs by fraud are not violent felony offenses or felony drug offenses within the meaning of Tennessee Code Annotated section 39-17-1307(b)(1).

² In our review of the record, we noticed that each judgment form listed Defendant’s “Arrest Date” as “8/4/2022” and awarded pretrial jail credit from “8/4/2022 to 8/5/2022.” All of these dates are after the effective date of the sentence imposed by the trial court. We surmise this was likely a clerical error, as Defendant’s offense date is listed as “August 3, 2021” on the judgment forms and in the criminal information. On remand, the trial court should correct the judgment forms as necessary to reflect the proper dates.

The State disagrees, asserting that Defendant's six convictions for obtaining drugs by fraud are "felony drug offenses" for the purposes of Tennessee Code Annotated section 39-17-1307(b)(1)(B) and therefore the evidence is sufficient to support the convictions.

At the outset, we note that Defendant analyzes the sufficiency of the evidence by examining each subsection of Tennessee Code Annotated section 39-17-1307 despite the fact that the information charged Defendant only under subsection (b)(1)(B). We will limit our analysis of the sufficiency of the evidence as to subsection (b)(1)(B).

To best address Defendant's issue, we must start with the language of the statute. Defendant was charged in nine counts of a criminal information with violating Tennessee Code Annotated section 39-17-1307(b)(1)(B). Each count referenced a different type of firearm. This statute, in pertinent part, states, "(b)(1) A person commits an offense who unlawfully possesses a firearm, as defined in § 39-11-106, and: (B) Has been convicted of a felony drug offense." There is no dispute on appeal that Defendant was in possession of all the weapons referenced in the separate counts on which she was convicted. Additionally, Defendant does not argue on appeal that the weapons fail to meet the statutory definition of a firearm.

For a jury to find Defendant guilty of the offense, the jury had to determine that Defendant (1) unlawfully possessed a firearm; and (2) has been convicted of a felony drug offense. Again, Defendant does not contest that she possessed firearms; thus, the only question facing our resolution is whether Defendant's prior offenses are felony drug offenses.

Tennessee Code Annotated section 39-17-1307(b)(1)(B) appears within Title 39 of the Code, entitled "Criminal Offenses," in Chapter 17, entitled "Offenses Against Public Health, Safety and Welfare," Part 13, entitled "Weapons." Tennessee Code Annotated section 39-11-104 reminds us that "[t]his title [39] shall be construed according to the fair import of its terms, including reference to judicial decisions and common law interpretations, to promote justice, and effect the objectives of the criminal code." "The fair import of terms includes relying upon the natural and ordinary meaning of the language used." *State v. Marcum*, 109 S.W.3d 300, 303-04 (Tenn. 2003) (citing *State v. Logan*, 973 S.W.2d 279, 282 (Tenn. Crim. App. 1998)).

The definitions for Chapter 17 appear in Tennessee Code Annotated section 39-17-1301. "Felony drug offense" is not defined in section 39-17-1307 or in the definitions for Chapter 17 of Title 39. *State v. Smith*, 495 S.W.3d 271, 274 (Tenn. Crim. App. 2016) (finding "[t]here is no statutory definition of 'felony drug offense' under Tennessee Code Annotated section 39-17-1307").

Here, we are tasked with determining what constitutes a “felony drug offense” for purposes of Tennessee Code Annotated section 39-17-1307(b)(1)(B). Defendant’s issue, whether a prior conviction for obtaining drugs by fraud constitutes a felony drug offense for the purposes of Tennessee Code Annotated section 39-17-1307(b)(1)(B), appears to be a case of first impression.

To ascertain the intent of the legislature, we turn to the rules of statutory construction. Appellate courts review issues of statutory construction under a de novo standard of review. *State v. Hogg*, 448 S.W.3d 877, 887 (Tenn. 2014). “The role of this Court in construing statutes ‘is to give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.’” *State v. McGouey*, 229 S.W.3d 668, 672 (Tenn. 2007) (quoting *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000)). The courts “must look to the plain language of the statute to determine the intent of the legislature.” *Hogg*, 448 S.W.3d at 887. When the language of the legislature is clear and unambiguous, the court should apply the plain language in its normal and accepted use. However, when the language of a statute is susceptible of more than one meaning, “we must resort to the rules of statutory construction and other external sources to ascertain the General Assembly’s intent and purpose.” *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010). The court should not incorporate “magic words” into criminal statutes, especially where the legislature has specifically included the proposed language in other statutes but not in the one under dispute. *See State v. Nelson*, 23 S.W.3d 270, 271 (Tenn. 2000). We must “presume that the General Assembly used every word deliberately and that each word has a specific meaning and purpose.” *Lee Med., Inc.*, 312 S.W.3d at 527. We also must consider “[t]he overall statutory framework,” when construing statutes, construing “statutes ‘in pari materia’ – those relating to the same subject or having a common purpose . . . together” *State v. Deberry*, 651 S.W.3d 918, 925 (Tenn. 2022) (quoting *Coffee Cnty. Bd. of Educ. v. City of Tullahoma*, 574 S.W.3d 832, 846 (Tenn. 2019); *Wilson v. Johnson Cnty.*, 879 S.W.2d 807, 809 (Tenn. 1994)).

While there is no definition for “felony drug offense” in Title 39, this Court has previously examined whether an out-of-state conviction constitutes a “felony drug offense” for purposes of Tennessee Code Annotated section 39-17-1307(b)(1)(B). *Smith*, 495 S.W.3d at 272. In *Smith*, the defendant was charged with one count of possession of a weapon after having been convicted of a felony drug offense along with other charges. He sought dismissal of the firearm charge, arguing that his prior drug conviction for felony possession of cocaine in Indiana would be a misdemeanor if committed in Tennessee. *Id.* at 273. The trial court, siding with the defendant, found that the defendant’s conduct would be classified as misdemeanor simple possession of cocaine under Tennessee law and dismissed the firearm charge; the State appealed. *Id.* To answer the question at hand, this Court noted that “felony drug offense” was not defined anywhere in the Code but that the term “felony” was defined in Tennessee Code Annotated section 39-11-110 as “[a]ll

violations of law that may be punished by one (1) year or more of confinement or by the infliction of the death penalty[,]” and the Tennessee definition of felony should be used to determine whether an out-of-state drug conviction constituted a “felony drug offense” for the purpose of the firearm charge. *Id.* at 274. This Court ultimately concluded that the defendant’s out-of-state conviction constituted a “felony drug offense” because “Defendant could have received a punishment of imprisonment for one year or more” and reinstated the indictment. *Id.*

While *Smith* is certainly instructive, it does not entirely answer the question posed herein. Here, the answer to the question lies not in what constitutes a felony, but rather in what constitutes a felony *drug offense*.

In 1971, the Tennessee General Assembly passed the “Tennessee Drug Control Act of 1971.” 1971 Tenn. Pub. Acts ch. 163. “The purpose of this Act was ‘to provide for a comprehensive system of drug and drug abuse control for Tennessee.’” *Jones v. Greene*, 946 S.W.2d 817, 821 n.8 (Tenn. Ct. App. 1996) (quoting 1971 Tenn. Pub. Acts 366). The Tennessee Drug Control Act of 1971 was patterned after the Uniform Controlled Substances Act drafted by the National Conference of Commissioners on Uniform State Laws in 1970. *See id.*; *State v. Magness*, 165 S.W.3d 300, 305 (Tenn. Crim. App. 2004) (noting “the legislation passed by the General Assembly was modeled on the Uniform Controlled Substances Act”); *State v. Edwards*, 572 S.W.2d 917, 920 n.2 (citing 21 U.S.C. §§ 801, et seq.); *see also* Uniform Controlled Substances Act, 9 [Pt. II] U.L.A. 1 (1987). The Tennessee Drug Control Act of 1971 was amended in 1989. *See* T.C.A. §§ 39-17-401 to -451. The “Tennessee Drug Control Act of 1989” (“The Act”) regulates the manufacture, distribution, sale, and possession of certain materials defined by The Act to be “controlled substances.” The Act classifies “controlled substances” as a “drug, substance, or immediate precursor” in several schedules, depending on the danger presented by their abuse. *See* T.C.A. §§ 39-17-402 and -404 to -416. Penalties for violations of The Act are tied to the schedules and outlined in Tennessee Code Annotated section 39-17-417.

This Court has noted several times that The Act was “enacted to compliment . . . federal laws regarding drug control.” *Magness*, 165 S.W.3d at 305-06 (citing *State v. Mongiove*, No. 115, 1991 WL 9036, at *6 (Tenn. Crim. App. Jan. 31, 1991); *Hughes v. State Dept. of Safety*, 776 S.W.2d 111, 113 (1989)); *see also Edwards*, 572 S.W.2d at 920 n.2 (noting that The Act is patterned after the federal act); *Hicks v. State*, 534 S.W.2d 872, 874 (Tenn. Crim. App. 1975).

Title 21 of the United States Code Annotated entitled “Food and Drugs” contains Chapter 13, entitled “Drug Abuse Prevention and Control.” According to the historical notes, this subchapter is “popularly known as the ‘Controlled Substances Act.’” 21

U.S.C.A. § 801, Historical Notes. Section 802 of Title 21 provides definitions for use in the subchapter. Section 802(44) defines a “felony drug offense” as “an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.” Because The Act is patterned after the federal act, we find this definition helpful in determining what constitutes a felony drug offense for purposes of Tennessee law and hold that it should be used to determine whether Defendant’s prior offenses constitute felony drug offenses.

To sustain Defendant’s convictions for possession of a firearm after having been convicted of a felony drug offense, the State relied on Defendant’s prior convictions for obtaining drugs by fraud. These convictions stemmed from Defendant’s violations of Tennessee Code Annotated section 53-11-402(a)(3), which provides,

It is unlawful for any person knowingly or intentionally to . . . [a]cquire or obtain, or attempt to acquire or attempt to obtain, possession of a controlled substance by . . . fraud. . . . Any person who violates this subdivision (a)(3) may, upon first conviction, have the sentence suspended and may as a condition of the suspension be required to participate in a program of rehabilitation at a drug treatment facility operated by the state or a comprehensive community mental health center[.]

T.C.A. § 53-11-402(a)(3). A violation of this section is a Class D felony. T.C.A. §53-11-402(b)(1). “Nothing contained in this section shall preclude a prosecution under the general drug laws.” T.C.A. § 53-11-402(b)(3). When we look at the plain language of Tennessee Code Annotated section 53-11-402, making it unlawful to knowingly or intentionally “[a]cquire or obtain, or attempt to acquire or attempt to obtain, possession of a controlled substance by . . . fraud,” we conclude that it is exactly the type of conviction that would constitute a felony drug offense for purposes of a conviction under Tennessee Code Annotated 39-17-1307(b)(1)(B).

In fact, The Act itself, in section 39-17-401(a), specifically incorporates “title 53, chapter 11, parts 3 and 4” as part of The Act. In our view, the legislature intended the specified offenses in chapter 11, parts 3 and 4 of Title 53 to be considered as part of The Act.

Moreover, we conclude that the federal definition of “felony drug offense” relating to an offense that “prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances” would include Defendant’s prior felony convictions. The statute under which Defendant was convicted, section 53-11-402(a)(3), makes it unlawful “for any person knowingly or intentionally to . . . [a]cquire or

obtain, or attempt to acquire or attempt to obtain, possession of a controlled substance by . . . fraud. . . .” T.C.A. § 53-11-402(a)(3). Taking into account the overall statutory framework, the plain language of the statute, prior cases, and the definition of “felony drug offense” under federal statute, we hold that Defendant’s prior convictions for obtaining drugs by fraud are felony drug offenses for purposes of Tennessee Code Annotated section 39-17-1307(b)(1)(B). Consequently, Defendant’s convictions are affirmed.

Conclusion

For the foregoing reasons, the judgments of the trial court are affirmed. The matter is remanded to the trial court for correction of the judgment forms as necessary to reflect the correct arrest date and pretrial jail credit dates.

TIMOTHY L. EASTER, JUDGE